



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	)	
	)	
James A. Tranquilla	)	
	)	Art Unit: 1755
Serial No.: 09/872,178	)	
	)	Examiner: Michael A. Marcheschi
Filed: June 1, 2001	)	
	)	
For: A METHOD OF REDUCING	)	
CARBON LEVELS IN FLY ASH	)	

**AFFIDAVIT OF BRIAN NEILL**

I, Brian Neill, hereby make oath and swear as follows:

1. I reside in Oromocto, in the Province of New Brunswick, Canada. I am the Chairman of EMR Microwave Technology Corporation (herein "EMR"). EMR is the assignee of United States Application 09/872,178 (herein "the application"). At all relevant times described in this Affidavit, I have been a director of EMR. I have at all relevant times had full access to all of the records of EMR.
2. The application relates to technology for enhancing the combustion of coal in a manner which reduces the output of pollutants such as particulates and greenhouse gases. As such, this invention has general importance.
3. EMR has had full carriage and control over the application since it was filed in the United States Patent and Trademark Office, by virtue of an assignment from the inventor James M. Tranquilla to EMR dated May 9, 2001.
4. The invention embodied in the application has at all times been of importance to EMR in that EMR has always desired to either exploit the invention itself or to

license or sell the invention to another party who could take full advantage of the invention. However, as will be described below, circumstances beyond the control of EMR prevented EMR from realizing its ambitions as a result of which EMR unintentionally and/or unavoidably abandoned the application.

5. On or about June 18, 1999 and February 10, 2000, EMR was the recipient of a loan of money from the province of New Brunswick, Canada. As security for the loan, EMR entered into a security agreement wherein the assets of EMR were provided as security for the loan.

6. EMR subsequently defaulted on this loan. On February 12, 2003 EMR received a demand letter from New Brunswick requiring EMR to transfer its assets to New Brunswick, as required under the terms of the loan agreement. Based on this demand letter, it was our understanding that the application would now be transferred to New Brunswick and that they would assume responsibility for continuing its prosecution.

7. It was never the intention of EMR to abandon the application. The abandonment of this application was permitted to occur on the basis of an assumption that now appears to be incorrect, namely that New Brunswick would pursue prosecution of the application and exploit the invention either by itself or via a licensee or assignee of the invention. While EMR has repeatedly attempted to determine if New Brunswick will pursue prosecution of the application, from the time of the loan default until now, it has now become apparent that New Brunswick will not pursue prosecution of the application.

8. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false

statement and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Sworn before me in the city )  
Of MISSISSAUGA, in the )  
Province of ONTARIO, )  
Canada, this 13 day of JAN., 2005 )

  
\_\_\_\_\_ )

A Commissioner, etc.

STEVEN H. LEACH

  
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BRIAN NEILL